

AMENDED IN ASSEMBLY AUGUST 28, 2000

AMENDED IN ASSEMBLY JUNE 15, 2000

AMENDED IN SENATE MAY 16, 2000

AMENDED IN SENATE APRIL 27, 2000

SENATE BILL

No. 1471

Introduced by Senator Schiff

(Coauthors: Assembly Members Havice, Kuehl, and
Washington)

February 10, 2000

An act to add Chapter 3.5 (commencing with Section 3040) to Title 14 of Part 4 of Division 3 of the Civil Code, relating to health care liens.

LEGISLATIVE COUNSEL'S DIGEST

SB 1471, as amended, Schiff. Health care liens.

Existing law provides for the regulation of health care service plan contracts by the Department of Managed Care and for the regulation of health insurance policies issued by disability insurers regulated by the Department of Insurance, as specified.

This bill would provide that no lien asserted by a licensee, ~~as defined,~~ of the Department of Managed Care or the Department of Insurance, *and no lien of a medical group or an independent practice association, to the extent it asserts or enforces a lien,* for the recovery of money paid or payable to or on behalf of, ~~or for the provision of service to,~~ an enrollee or insured for medical services provided under a health care

service plan contract or disability insurance policy, may exceed ~~the amount paid by the licensee pursuant to that contract or policy to the treating medical provider and associated lien perfection costs~~ *specified amounts*. These provisions would not apply to ~~liens~~ *a lien made against a workers' compensation-claims claim, against a 3rd party for Medi-Cal benefits, and for hospital services, as specified. The bill would declare that it would not create any lien right that does not currently exist at law and would not make a lien that arises out of an employee benefit plan or fund enforceable if preempted by federal law. The bill would prohibit its provisions from being admitted into evidence or given in an instruction in any civil action between an enrollee or insured and a 3rd party.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.5 (commencing with Section
2 3040) is added to Title 14 of Part 4 of Division 3 of the Civil
3 Code, to read:

4
5 CHAPTER 3.5. HEALTH CARE LIENS
6

7 3040. (a) No lien asserted by a licensee of the
8 Department of Managed Care or the Department of
9 Insurance, *and no lien of a medical group or an*
10 *independent practice association, to the extent that it*
11 *asserts or enforces a lien, for the recovery of money paid*
12 *or payable to or on behalf of,* ~~or for the provision of~~
13 ~~services to,~~ an enrollee or insured for ~~medical health care~~
14 services provided under a health care service plan
15 contract or a disability insurance policy, when the right
16 of the licensee, *medical group, or independent practice*
17 *association* to assert that lien is granted in a plan contract
18 subject to the Knox-Keene Health Care Service Plan Act
19 of 1975 (Chapter 2.2 (commencing with Section 1340) of
20 Division 2 of the Health and Safety Code) or a disability
21 insurance policy subject to the Insurance Code, may

1 ~~exceed the amount actually paid by the licensee pursuant~~
2 ~~to that contract or policy to any treating medical~~
3 ~~provider, plus the reasonable cost sum of the reasonable~~
4 ~~costs actually paid by the licensee, medical group, or~~
5 ~~independent practice association to perfect the lien and~~
6 ~~one of the following:~~

7 *(1) For health care services not provided on a*
8 *capitated basis, the amount actually paid by the licensee,*
9 *medical group, or independent practice association*
10 *pursuant to that contract or policy to any treating medical*
11 *provider.*

12 *(2) For health care services provided on a capitated*
13 *basis, the amount equal to 80 percent of the usual and*
14 *customary charge for the same services by medical*
15 *providers that provide health care services on a*
16 *noncapitated basis in the geographic region in which the*
17 *services were rendered.*

18 ~~(b) For purposes of this section, a “licensee” shall~~
19 ~~include a medical group or independent practice~~
20 ~~association whose contract with the licensee to provide~~
21 ~~medical services under the health care service plan~~
22 ~~contract or disability insurance policy contains an~~
23 ~~assignment of the licensee’s right to assert a lien described~~
24 ~~in subdivision (a).~~

25 ~~(c) For purposes of this section, a “licensee” shall not~~
26 ~~include a medical group or independent practice~~
27 ~~association that is operated by a public entity and is a~~
28 ~~direct provider of medical services under a discounted or~~
29 ~~capitated arrangement with a licensee described in~~
30 ~~subdivision (a).~~

31 ~~(d) This section shall not apply to liens made against~~
32 ~~workers’ compensation claims.~~

33 *(b) If an enrollee or insured received health care*
34 *services on a capitated basis and on a noncapitated basis,*
35 *and the licensee, medical group, or independent practice*
36 *association that provided the health care services on the*
37 *capitated basis paid for the health care services the*
38 *enrollee received on the noncapitated basis, then a lien*
39 *that is subject to subdivision (a) may not exceed the sum*
40 *of the reasonable costs actually paid to perfect the lien,*

1 and the amounts determined pursuant to both
2 paragraphs (1) and (2) of subdivision (a).

3 (c) If the enrollee or insured engaged an attorney,
4 then the lien subject to subdivision (a) may not exceed
5 the lesser of the following amounts:

6 (1) The maximum amount determined pursuant to
7 subdivision (a) or (b), whichever is applicable.

8 (2) One-third of the moneys due to the enrollee or
9 insured under any final judgment, compromise, or
10 settlement agreement.

11 (d) If the enrollee or insured did not engage an
12 attorney, then the lien subject to subdivision (a) may not
13 exceed the lesser of the following amounts:

14 (1) The maximum amount determined pursuant to
15 subdivision (a) or (b), whichever is applicable.

16 (2) One-half of the moneys due to the enrollee or
17 insured under any final judgment, compromise, or
18 settlement agreement.

19 (e) Where a final judgement includes a special finding
20 by a judge, jury, or arbitrator, that the enrollee or insured
21 was partially at fault, the lien subject to subdivision (a) or
22 (b) shall be reduced by the same comparative fault
23 percentage by which the enrollee or insured's recovery
24 was reduced.

25 (f) A lien subject to subdivision (a) or (b) is subject to
26 pro rata reduction, commensurate with the enrollee's or
27 insured's reasonable attorney's fees and costs, in
28 accordance with the common fund doctrine.

29 (g) This section is not applicable to any of the
30 following:

31 (1) A lien made against a workers' compensation
32 claim.

33 (2) A lien for Medi-Cal benefits pursuant to Article 3.5
34 (commencing with Section 14124.70) of Chapter 7 of Part
35 3 of Division 9 of the Welfare and Institutions Code.

36 (3) A lien for hospital services pursuant to Chapter 4
37 (commencing with Section 3045.1).

38 (h) This section does not create any lien right that does
39 not exist at law, and does not make a lien that arises out

1 *of an employee benefit plan or fund enforceable if*
2 *preempted by federal law.*
3 *(i) The provisions of this section may not be admitted*
4 *into evidence nor given in any instruction in any civil*
5 *action or proceeding between an enrollee or insured and*
6 *a third party.*

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